

AMENDED IN SENATE MAY 19, 2010

AMENDED IN SENATE MAY 3, 2010

AMENDED IN SENATE APRIL 5, 2010

SENATE BILL

No. 974

**Introduced by Senator Steinberg
(Coauthors: Senators Hancock and Romero)**

February 8, 2010

An act to add Part 38 (commencing with Section 64200) to Division 4 of Title 2 of the Education Code, and to amend Sections 17053.74 and ~~23634~~ 23622.7 of, and to add Sections ~~6902.6, 17057.6, 17057.6~~ and 23610.6 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 974, as amended, Steinberg. Income and corporations tax: hiring and career credits.

(1) The Personal Income Tax Law and *The Corporation Tax Law* authorize various credits against the taxes imposed by those laws.

This bill, in accordance with legislative findings contained in this bill and for ~~taxable~~ *calendar* years beginning on or after January 1, 2011, would, for a ~~qualified taxpayer, as defined~~ *business entity, as described*, that provides career technical education, authorize a credit against those taxes, subject to specified limitations, in an amount equal to that allocated by the State Department of Education.

This bill would, ~~for taxable years beginning on or after January 1, 2011, in lieu of these credits authorized under the Personal Income Tax Law and the Corporation Tax Law, allow a credit against qualified state sales and use taxes, as provided. This bill would impose specified duties~~

on the State Department of Education, the Franchise Tax Board, and the State Board of Equalization, in administering the credits.

(2) The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws, including a hiring credit for qualified taxpayers who hire qualified employees, as defined, within enterprise zones, subject to specific criteria. Qualified employees includes, for purposes of the credit, an ex-offender, as defined. Existing law requires a taxpayer to obtain, from specified agencies, a certification providing that a qualified employee meets the requirements of the credit.

This bill would, for taxable years beginning on or after January 1, 2011, revise the definition of “qualified employee” for this purpose, by providing that an ex-offender includes an individual who has been convicted of a felony or a misdemeanor offense punishable by incarceration, or a person charged with a felony or misdemeanor punishable by incarceration but placed on probation without a finding of guilt, with specified exclusions. This bill would also, for taxable years beginning on or after January 1, 2011, revise the definition of “qualified employee” by removing, as an element of eligibility as a qualified employee, residency in a targeted employment or targeted tax area. Additionally, this bill would require taxpayers to apply for, and obtain, the certification of a qualified employee within ~~21~~ 42 days of the date of hire of the qualified employee. This bill would also make technical, nonsubstantive changes to remove obsolete references in the credit provisions.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Part 38 (commencing with Section 64200) is
2 added to Division 4 of Title 2 of the Education Code, to read:

3

4 PART 38. CAREER PATHWAYS INVESTMENT CREDIT

5

6 64200. (a) The Legislature finds and declares the following:

7 (1) The deep economic recession that has gripped California
8 requires a timely response and strategic investments to educate

1 and prepare the workforce that will help fuel the next stage of the
2 state's economic growth.

3 (2) The swift recovery of the California economy faces an
4 obstacle in the high numbers of young people dropping out of the
5 state's middle and high schools. Longitudinal data show that fewer
6 than 70 percent of 9th graders in California graduate from high
7 school in four years. According to the State Department of
8 Education, some 85,000 middle and high school pupils are
9 abandoning secondary schools annually.

10 (3) If the dropout crisis is left unchecked, demographic trends
11 suggest that the rate of future dropouts will increase. The Public
12 Policy Institute of California predicts there will be twice as many
13 high school dropouts in California in 2025 as there will be jobs to
14 support them.

15 (4) According to a 2007 study by the California Dropout
16 Research Project, each cohort of dropouts costs California more
17 than \$46 billion in total economic losses over the lifetimes of those
18 dropouts.

19 (5) The fastest growing occupations in the coming years are
20 expected to be those that require scientific, technical, engineering,
21 or math (STEM) skills, such as jobs in biotechnology, digital media
22 arts, green technology, or computer-related and health-related
23 fields.

24 (6) A 2006 poll of at-risk California 9th and 10th graders by
25 Peter D. Hart Research Associates found that 6 in 10 pupils were
26 not motivated to succeed in school. Of those pupils, more than 90
27 percent said they would be more engaged in their education if
28 classes helped them acquire skills and knowledge relevant to future
29 careers.

30 (7) Comprehensive programs that link challenging academics
31 with demanding career and technical education create engaging
32 pathways to further education, advanced training, and productive
33 jobs in high opportunity careers. They keep students on track to a
34 diploma, postsecondary credentials, and lasting career success.

35 (8) New research from the Public Policy Institute of California
36 suggests that the state's enterprise zone tax credit program has not
37 significantly increased job creation or the employment of
38 hard-to-hire individuals, as was intended.

39 (9) Two aspects of the enterprise zone program that have
40 produced an especially poor return on investment, Targeted

1 Employment Areas (TEA) and retroactive vouchering, should be
2 phased out in favor of fiscal incentives that enhance workforce
3 development for the jobs of the future and that have a beneficial
4 impact on high school graduation rates.

5 (b) It is the intent of the Legislature to do the following:

6 (1) Evaluate the state's tax expenditure investments as rigorously
7 as it evaluates the state's spending programs.

8 (2) Establish fiscal incentives, such as tax credits, that encourage
9 California businesses and industry to enter into partnerships with
10 schools that strengthen middle and high school education statewide.
11 These partnerships will connect pupils and teachers to real-world
12 experience that provides sustained exposure to applied academics,
13 skill development, work-related education, and potential future
14 employers. This experience will keep students engaged and on
15 track to graduation, further education, and productive careers.

16 (c) As used in this section, "tax expenditure" means a credit,
17 deduction, exclusion, exemption, or any other tax benefit as may
18 be provided for by state law.

19 64201. For purposes of this part:

20 (a) *"Applicant" means a business entity that enters into a*
21 *contract or memorandum of understanding with a local educational*
22 *agency to provide career technical education that connects pupils*
23 *to real-world experience and provides sustained exposure to*
24 *applied academics, skill development, work-related education,*
25 *and potential future employment.*

26 ~~(a)~~

27 (b) "Authentic application" means an activity in the context of
28 a middle or high school course that requires pupils to work actively
29 with academic and technical concepts, facts, and skills in a realistic,
30 work-like setting that emulates the problems encountered by
31 professionals and the practices they use to address them. These
32 applications typically require pupils to examine a task from a
33 variety of perspectives, to draw upon multiple resources, to
34 collaborate with others, and to accomplish tasks and projects by
35 working in teams rather than individually.

36 ~~(b)~~

37 (c) "Career pathways investment credit ceiling" means the
38 aggregate amount of credit that may be annually allocated by the
39 department pursuant to Sections 17057.6 and 23610.6 of the
40 Revenue and Taxation Code.

1 ~~(e)~~

2 ~~(d)~~ “Department” means the State Department of Education.

3 ~~(d)~~

4 ~~(e)~~ “Middle school or high school programs that create career
5 pathways” means programs that support the following:

6 (1) High school pathways programs delivered through high
7 schools, regional occupation centers or programs, California
8 Partnership Academies and other career academies, alternative
9 education programs, including continuation schools and programs
10 administered by county offices of education, or adult education
11 programs, that integrate academic and technical learning to prepare
12 pupils for both postsecondary education and careers in high-growth
13 or high-need sectors of the economy. These programs include core
14 academic courses emphasizing authentic applications, sequences
15 or clusters of three or more courses that align with the State Board
16 of Education approved career technical education standards and
17 frameworks that also integrate key academic concepts and skills,
18 work-based learning opportunities, additional services like
19 counseling or supplementary instruction in reading, writing, and
20 mathematics. These programs shall also:

21 (A) Focus on occupations requiring comprehensive skills in
22 leading to high entry-level wages or the possibility of significant
23 wage increases after a demonstrated amount of time at the position.

24 (B) Provide prerequisite courses that are needed to enter
25 apprenticeships, or postsecondary vocation certificate or degree
26 programs. Where possible, sequenced courses shall be articulated
27 with, or linked to, postsecondary certificate and degree programs
28 in the region.

29 (C) Offer as many courses as possible that have been approved
30 by the University of California as courses meeting the “A-G”
31 admissions requirements.

32 (2) Curriculum and professional development.

33 (3) Middle school career exploration activities.

34 (4) Externship opportunities that expose middle school and high
35 school teachers to the skills and competencies that pupils need for
36 successful employment in high-growth sectors of the California
37 economy.

38 (5) Active engagement by business and industry in pathway
39 design and implementation, work-based learning, assessment of

1 student work, and other aspects of effective preparation for success
2 in further postsecondary education and careers.

3 ~~(e) “Qualified taxpayer” means a business entity that enters into~~
4 ~~a contract or memorandum of understanding with a local~~
5 ~~educational agency to provide career technical education that~~
6 ~~connects pupils to real-world experience and provides sustained~~
7 ~~exposure to applied academics, skill development, work-related~~
8 ~~education, and potential future employment.~~

9 64202. For ~~taxable~~ *calendar* years beginning on or after January
10 1, 2011, the department shall determine and allocate the career
11 pathways investment credit ceiling. ~~The committee~~ *department*
12 may reserve a portion of anticipated career pathways investment
13 credit ceiling for subsequent ~~taxable~~ *calendar* years. For purposes
14 of this section, the department shall do all of the following:

15 ~~(1)~~

16 (a) Allocate the career pathways investment credit ceiling on a
17 regular basis consisting of two or more periods in a calendar year
18 in which applications may be filed and considered.

19 ~~(2) The career pathways investment credit shall be allocated to~~
20 ~~a qualified taxpayer for application over a five-year period. If a~~
21 ~~qualified taxpayer is allocated a portion of the career pathways~~
22 ~~investment credit, the qualified taxpayer may apply for another~~
23 ~~allocation in the sixth year after the first allocation of the credit.~~

24 (b) (1) Establish a procedure for ~~qualified taxpayers~~ *applicants*
25 to file with the department a written application for the allocation
26 of the tax credit, establish application filing deadlines, the
27 maximum amount of career pathways investment credit ceiling
28 that the department may allocate for that period, and the
29 approximate date on which the allocations are made.

30 (2) The department may contract with other entities to aid in
31 the processing and review of applications.

32 (c) (1) Give priority in allocating tax credits to the following:

33 (A) ~~Qualified taxpayers~~ *Applicants* that have entered into a
34 contract or memorandum of understanding with local educational
35 agencies in communities that have an unemployment rate higher
36 than the statewide unemployment rate, as determined by the United
37 States Census, and a high school graduation rate lower than the
38 statewide high school graduation rate, as determined by the
39 department using the California Longitudinal Pupil Achievement
40 Data System.

1 (B) ~~Qualified taxpayers~~ *Applicants* that have entered into a
2 contract or memorandum of understanding with local educational
3 agencies with proportions of private funding support that exceed
4 the one-to-one match requirement described in paragraph (1) of
5 subdivision (e).

6 (C) ~~Qualified taxpayers~~ *Applicants* that have entered into a
7 contract or memorandum of understanding with local educational
8 agencies that are articulated with postsecondary certificate and
9 degree programs in their region.

10 (2) To the maximum extent practicable, subject to paragraph
11 (1), give priority in allocating career pathways investment credits
12 to ~~qualified taxpayers~~ *applicants* serving socioeconomically diverse
13 student populations and on a geographically equitable basis.

14 (3) The department shall not give priority to any ~~qualified~~
15 ~~taxpayer applicant~~ by virtue of the date of submission of its
16 application, except to allocate credits where two or more ~~qualified~~
17 ~~taxpayers applicants~~ have the same rating.

18 (d) Only allocate the career pathways investment credit ceiling
19 to a ~~qualified taxpayer~~ *an applicant* that agrees to enter into an
20 enforceable contract or memorandum of understanding with the
21 department to comply with the requirements of this part, Sections
22 17057.6 and 23610.6 of the Revenue and Taxation Code, any
23 applicable state laws, and any additional requirements the
24 department deems necessary or appropriate to serve the purposes
25 of this part. The contract or memorandum of understanding shall
26 also provide for legal action to obtain specified performance or
27 monetary damages for breach of contract and shall require regular
28 programmatic audits.

29 (e) Adopt allocation criteria that awards credits to ~~qualified~~
30 ~~taxpayers applicants~~ that demonstrate that either the ~~qualified~~
31 ~~taxpayer applicant~~ or the local educational agency meets the
32 following criteria:

33 (1) At least a one-to-one match of private to public investment
34 in middle school and high school programs that create career
35 pathways or similar programs.

36 (2) The effectiveness of the career pathway program toward
37 preparing students for productive, high-wage employment in
38 growing or high-need sectors of the California economy.
39 Effectiveness criteria shall include:

40 (A) Pathway completion rates.

1 (B) High school graduation rates.

2 (C) Percentages of students attaining an industry certification.

3 (D) Percentages of students transitioning successfully to
4 postsecondary education.

5 (E) Employment and earnings after high school.

6 (3) The level of the ~~qualified taxpayer's~~ *applicant's* investment
7 in, oversight of, and ability to leverage and sustain current career
8 pathways programs and current career technical education
9 programs.

10 (f) Develop and provide forms for the purposes of informing
11 potential ~~qualified taxpayers~~ *applicants* of the purposes of this
12 part.

13 (g) (1) Certify to each ~~qualified taxpayer~~ *applicant* the amount
14 of the career pathways credit ceiling allocated to it for the ~~taxable~~
15 *calendar* year. The certificate shall include the amount of the credit
16 allocation that may be distributed and applied by the ~~qualified~~
17 ~~taxpayer applicant~~ against tax liability for each ~~taxable year of the~~
18 ~~five-year credit allocation period~~.

19 (2) The department shall provide a copy of the certification to
20 the ~~qualified taxpayer~~ *applicant*.

21 (h) The department may, in its discretion, consult with the
22 Treasurer and the California Tax Credit Allocation Committee
23 regarding the allocation of tax credits. If a request for consultation
24 is made, the Treasurer and the California Tax Credit Allocation
25 Committee shall aid the department.

26 (i) Establish audit requirements. The department may share
27 information established during an audit with the Franchise Tax
28 Board.

29 64203. For ~~taxable~~ *calendar* years beginning on or after January
30 1, 2011, the department shall develop and provide forms for use
31 by ~~qualified taxpayers~~ *applicants* and adopt uniform procedures
32 for submission and review of applications. The application shall
33 include, but not be limited to, the following:

34 (a) A copy of the contract or memorandum of understanding
35 between the ~~qualified taxpayer~~ *applicant* and the local educational
36 agency that includes, but is not limited to, the following:

37 (1) A clear and comprehensive plan for each middle school or
38 high school program that creates career pathways.

39 (2) A description of the nature and value of the ~~qualified~~
40 ~~taxpayer's~~ *applicant's* support for career exploration activities,

1 curriculum and professional development programs, and middle
2 school or high school programs that create career pathways that
3 integrate academic and technical learning to prepare pupils for
4 both college and careers. The support may include any of the
5 following:

6 (A) Equipment or instructional materials.

7 (B) Employees to provide instruction, in partnership with
8 credentialed teachers employed by the school district, at the
9 schoolsite.

10 (C) Opportunities for pupils to be mentored by, or to shadow,
11 employees at a partnering private entity.

12 (D) Paid or unpaid internships.

13 (E) Paid jobs.

14 (F) Teacher externships.

15 (G) Contributions to programs administered by postsecondary
16 institutions that provide support to middle or high school programs
17 that create career pathways. This support may include, but shall
18 not be limited to, teacher training, curriculum development, and
19 other forms of technical assistance.

20 (b) Details about the strength and relevance of the education
21 plan to the needs of industry for qualified technical employees
22 applicable to the economic development needs of the region in
23 which the local education agency and partnering private entity are
24 located.

25 (c) Projections of program participant enrollment.

26 (d) The method by which accountability for program participant
27 enrollments and outcomes will be maintained. Outcomes shall
28 include the criteria listed in paragraph (2) of subdivision (e) of
29 Section 64202.

30 (e) Any other information deemed relevant by the department.

31 64204. (a) The department may charge a fee for the submission
32 of applications for allocations of the current ~~taxable~~ *calendar* year's
33 career pathways investment credit ceiling, reservation of the
34 following year's career pathways investment credit ceiling, and
35 for monitoring the compliance of ~~qualified taxpayers~~ *applicants*
36 receiving a credit under this part. If the department chooses to
37 impose a fee, it shall establish and charge fees in an amount which
38 it determines are reasonably sufficient to cover the costs of the
39 department, the State Board of Equalization, and the Franchise

1 Tax Board in carrying out the administrative responsibilities
2 required by this part.

3 (b) Fees collected pursuant to this subdivision shall be deposited
4 in the Career Pathways Investment Credit Fee Account, which is
5 hereby created in the State Treasury, and shall be available, upon
6 appropriation by the Legislature to cover the administrative costs
7 of the department, the State Board of Equalization, and the
8 Franchise Tax Board in administering this part.

9 (c) Until the time sufficient fee revenue is received by the
10 department to fully cover the administrative costs of administering
11 this part, the department may borrow moneys as may be required
12 for the purposes of meeting necessary administrative expenses of
13 the department in administering this part. Any loan made to the
14 department pursuant to this section shall be repayable solely from
15 the moneys appropriated to the department and shall not constitute
16 a general obligation for which the faith and credit of the state are
17 pledged.

18 64205. The department may prescribe rules and regulations to
19 carry out the purposes of this part, including any rules and
20 regulations necessary to establish procedures, processes,
21 requirements, and rules identified or required to implement this
22 part, including any rules and regulations necessary to establish a
23 fee schedule necessary to offset the costs of administering this
24 part.

25 ~~SEC. 2.—Section 6902.6 is added to the Revenue and Taxation~~
26 ~~Code, to read:~~

27 ~~6902.6. (a) A qualified taxpayer may, in lieu of claiming the~~
28 ~~credit allowed by Section 17057.6 or 23610.6, make an irrevocable~~
29 ~~election to apply the credit amount against sales tax reimbursement~~
30 ~~paid and use taxes paid to a retailer by the qualified taxpayer in~~
31 ~~accordance with this section.~~

32 ~~(b) For purposes of this section:~~

33 ~~(1) “Credit amount” means an amount equal to the tax credit~~
34 ~~amount that would otherwise have been allowed to a qualified~~
35 ~~taxpayer pursuant to Section 17057.6 or 23610.6 but for the~~
36 ~~election made pursuant to this section.~~

37 ~~(2) “Qualified taxpayer” means a person who is a qualified~~
38 ~~taxpayer within the meaning of subdivision (b) of Section 17057.6~~
39 ~~or 23610.6.~~

1 ~~(e) (1) A qualified taxpayer or affiliate shall submit to the board~~
2 ~~an irrevocable election, in a form as prescribed by the board, which~~
3 ~~shall include, but not be limited to, the following:~~

4 ~~(A) The credit amount.~~

5 ~~(B) The amount of sales tax reimbursement and use taxes paid~~
6 ~~during the taxable year for which the credit is claimed.~~

7 ~~(C) A copy of the certification issued by the State Department~~
8 ~~of Education to the qualified taxpayer under Section 64202 of the~~
9 ~~Education Code.~~

10 ~~(2) The election shall be filed on or before the date on which~~
11 ~~the qualified taxpayer would first be allowed to claim a credit~~
12 ~~pursuant to Section 17057.6 or 23610.6 on its tax return.~~

13 ~~(d) (1) The qualified taxpayer may elect to obtain a refund of~~
14 ~~sales and use taxes paid during the period described in~~
15 ~~subparagraph (B) of paragraph (1) of subdivision (c). If the~~
16 ~~qualified taxpayer elects to obtain a refund of sales and use taxes,~~
17 ~~the qualified taxpayer shall file a claim for refund with the~~
18 ~~irrevocable election described in subdivision (a). The refund~~
19 ~~amount shall not exceed the credit amount.~~

20 ~~(2) No interest shall be paid on any amount refunded or credited~~
21 ~~pursuant to paragraph (1).~~

22 ~~(3) If the qualified taxpayer does not elect to obtain a refund or~~
23 ~~in the case where the credit amount exceeds the amount of its claim~~
24 ~~for refund for the sales and use taxes, the qualified taxpayer may~~
25 ~~offset any remaining credit amount against the sales and use taxes~~
26 ~~until the credit is exhausted.~~

27 ~~(e) Section 6961 shall apply to any refund, or part thereof, that~~
28 ~~is erroneously made and any credit, or part thereof, that is~~
29 ~~erroneously allowed pursuant to this section.~~

30 ~~(f) The board shall provide an annual listing to the State~~
31 ~~Department of Education and the Franchise Tax Board, in a form~~
32 ~~and manner mutually agreed upon, of the qualified taxpayers that,~~
33 ~~during the year, have made an irrevocable election pursuant to this~~
34 ~~section and the credit amount claimed by each qualified taxpayer.~~

35 ~~SEC. 3.~~

36 ~~SEC. 2.~~ Section 17053.74 of the Revenue and Taxation Code
37 is amended to read:

38 17053.74. (a) There shall be allowed a credit against the “net
39 tax” (as defined in Section 17039) to a taxpayer who employs a

1 qualified employee in an enterprise zone during the taxable year.

2 The credit shall be equal to the sum of each of the following:

3 (1) Fifty percent of qualified wages in the first year of
4 employment.

5 (2) Forty percent of qualified wages in the second year of
6 employment.

7 (3) Thirty percent of qualified wages in the third year of
8 employment.

9 (4) Twenty percent of qualified wages in the fourth year of
10 employment.

11 (5) Ten percent of qualified wages in the fifth year of
12 employment.

13 (b) For purposes of this section:

14 (1) “Qualified wages” means:

15 (A) (i) Except as provided in clause (ii), that portion of wages
16 paid or incurred by the taxpayer during the taxable year to qualified
17 employees that does not exceed 150 percent of the minimum wage.

18 (ii) For up to 1,350 qualified employees who are employed by
19 the taxpayer in the Long Beach Enterprise Zone in aircraft
20 manufacturing activities described in Codes 3721 to 3728,
21 inclusive, and Code 3812 of the Standard Industrial Classification
22 (SIC) Manual published by the United States Office of
23 Management and Budget, 1987 edition, “qualified wages” means
24 that portion of hourly wages that does not exceed 202 percent of
25 the minimum wage.

26 (B) Wages received during the 60-month period beginning with
27 the first day the employee commences employment with the
28 taxpayer. Reemployment in connection with any increase, including
29 a regularly occurring seasonal increase, in the trade or business
30 operations of the taxpayer does not constitute commencement of
31 employment for purposes of this section.

32 (C) Qualified wages do not include any wages paid or incurred
33 by the taxpayer on or after the zone expiration date. However,
34 wages paid or incurred with respect to qualified employees who
35 are employed by the taxpayer within the enterprise zone within
36 the 60-month period prior to the zone expiration date shall continue
37 to qualify for the credit under this section after the zone expiration
38 date, in accordance with all provisions of this section applied as
39 if the enterprise zone designation were still in existence and
40 binding.

1 (2) “Minimum wage” means the wage established by the
2 Industrial Welfare Commission as provided for in Chapter 1
3 (commencing with Section 1171) of Part 4 of Division 2 of the
4 Labor Code.

5 (3) “Zone expiration date” means the date the enterprise zone
6 designation expires, is no longer binding, or becomes inoperative.

7 (4) (A) “Qualified employee” means an individual who meets
8 all of the following requirements:

9 (i) At least 90 percent of whose services for the taxpayer during
10 the taxable year are directly related to the conduct of the taxpayer’s
11 trade or business located in an enterprise zone.

12 (ii) Performs at least 50 percent of his or her services for the
13 taxpayer during the taxable year in an enterprise zone.

14 (iii) Is hired by the taxpayer after the date of original designation
15 of the area in which services were performed as an enterprise zone.

16 (iv) Is any of the following:

17 (I) Immediately preceding the qualified employee’s
18 commencement of employment with the taxpayer, was a person
19 eligible for services under the federal Job Training Partnership
20 Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving,
21 or is eligible to receive, subsidized employment, training, or
22 services funded by the federal Job Training Partnership Act, or its
23 successor.

24 (II) Immediately preceding the qualified employee’s
25 commencement of employment with the taxpayer, was a person
26 eligible to be a voluntary or mandatory registrant under the Greater
27 Avenues for Independence Act of 1985 (GAIN) provided for
28 pursuant to Article 3.2 (commencing with Section 11320) of
29 Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions
30 Code, or its successor.

31 (III) Immediately preceding the qualified employee’s
32 commencement of employment with the taxpayer, was an
33 economically disadvantaged individual 14 years of age or older.

34 (IV) Immediately preceding the qualified employee’s
35 commencement of employment with the taxpayer, was a dislocated
36 worker who meets any of the following:

37 (ia) Has been terminated or laid off or who has received a notice
38 of termination or layoff from employment, is eligible for or has
39 exhausted entitlement to unemployment insurance benefits, and
40 is unlikely to return to his or her previous industry or occupation.

1 (ib) Has been terminated or has received a notice of termination
2 of employment as a result of any permanent closure or any
3 substantial layoff at a plant, facility, or enterprise, including an
4 individual who has not received written notification but whose
5 employer has made a public announcement of the closure or layoff.

6 (ic) Is long-term unemployed and has limited opportunities for
7 employment or reemployment in the same or a similar occupation
8 in the area in which the individual resides, including an individual
9 55 years of age or older who may have substantial barriers to
10 employment by reason of age.

11 (id) Was self-employed (including farmers and ranchers) and
12 is unemployed as a result of general economic conditions in the
13 community in which he or she resides or because of natural
14 disasters.

15 (ie) Was a civilian employee of the Department of Defense
16 employed at a military installation being closed or realigned under
17 the Defense Base Closure and Realignment Act of 1990.

18 (if) Was an active member of the Armed Forces or National
19 Guard as of September 30, 1990, and was either involuntarily
20 separated or separated pursuant to a special benefits program.

21 (ig) Is a seasonal or migrant worker who experiences chronic
22 seasonal unemployment and underemployment in the agriculture
23 industry, aggravated by continual advancements in technology and
24 mechanization.

25 (ih) Has been terminated or laid off, or has received a notice of
26 termination or layoff, as a consequence of compliance with the
27 Clean Air Act.

28 (V) Immediately preceding the qualified employee's
29 commencement of employment with the taxpayer, was a disabled
30 individual who is eligible for or enrolled in, or has completed a
31 state rehabilitation plan or is a service-connected disabled veteran,
32 veteran of the Vietnam era, or veteran who is recently separated
33 from military service.

34 (VI) Immediately preceding the qualified employee's
35 commencement of employment with the taxpayer, was an
36 ex-offender. An ex-offender means an individual who has been
37 convicted of a felony or a misdemeanor offense punishable by
38 incarceration or a person charged with a felony offense or a
39 misdemeanor offense punishable by incarceration but placed on

1 probation by a state court without a finding of guilt. Ex-offender
2 shall not include an individual whose record has been expunged.

3 (VII) Immediately preceding the qualified employee's
4 commencement of employment with the taxpayer, was a person
5 eligible for or a recipient of any of the following:

6 (ia) Federal Supplemental Security Income benefits.

7 (ib) Temporary Assistance for Needy Families.

8 (ic) Food stamps.

9 (id) State and local general assistance.

10 (VIII) Immediately preceding the qualified employee's
11 commencement of employment with the taxpayer, was a member
12 of a federally recognized Indian tribe, band, or other group of
13 Native American descent.

14 (IX) An employee who qualified the taxpayer for the enterprise
15 zone hiring credit under former Section 17053.8 or the program
16 area hiring credit under former Section 17053.11.

17 (X) Immediately preceding the qualified employee's
18 commencement of employment with the taxpayer, was a member
19 of a targeted group, as defined in Section 51(d) of the Internal
20 Revenue Code, or its successor.

21 (B) Priority for employment shall be provided to an individual
22 who is enrolled in a qualified program under the federal Workforce
23 Investment Act or the California Work Opportunity and
24 Responsibility to Kids Act (CalWORKs) or who is eligible as a
25 member of a targeted group under the Work Opportunity Tax
26 Credit (Section 51 of the Internal Revenue Code), or its successor.

27 (5) "Taxpayer" means a person or entity engaged in a trade or
28 business within an enterprise zone designated pursuant to Chapter
29 12.8 (commencing with Section 7070) of the Government Code.

30 (6) "Seasonal employment" means employment by a taxpayer
31 that has regular and predictable substantial reductions in trade or
32 business operations.

33 (c) The taxpayer shall do both of the following:

34 (1) (A) Obtain, within ~~21~~ 42 days from the commencement
35 date of employment, from the Employment Development
36 Department, as permitted by federal law, the local county or city
37 Workforce Investment Act administrative entity, the local county
38 CalWORKs office or social services agency, or the local
39 government administering the enterprise zone, a certification which
40 provides that a qualified employee meets the eligibility

1 requirements specified in clause (iv) of subparagraph (A) of
2 paragraph (4) of subdivision (b). The Employment Development
3 Department may provide preliminary screening and referral to a
4 certifying agency. The Employment Development Department
5 shall develop a form for this purpose. The Department of Housing
6 and Community Development shall develop regulations governing
7 the issuance of certificates by local governments pursuant to
8 subdivision (a) of Section 7086 of the Government Code.

9 (B) Applications for certification shall be submitted to the
10 certifying agency within ~~21~~ 28 days of the commencement date
11 of employment for the employee. The certifying agency shall not
12 provide a certification for any employee whose employment
13 commenced more than ~~21~~ 28 days before the taxpayer requests a
14 certification.

15 (2) Retain a copy of the certification and provide it upon request
16 to the Franchise Tax Board.

17 (d) (1) For purposes of this section:

18 (A) All employees of trades or businesses, which are not
19 incorporated, that are under common control shall be treated as
20 employed by a single taxpayer.

21 (B) The credit, if any, allowable by this section with respect to
22 each trade or business shall be determined by reference to its
23 proportionate share of the expense of the qualified wages giving
24 rise to the credit, and shall be allocated in that manner.

25 (C) Principles that apply in the case of controlled groups of
26 corporations, as specified in subdivision (d) of Section 23622.7,
27 shall apply with respect to determining employment.

28 (2) If an employer acquires the major portion of a trade or
29 business of another employer (hereafter in this paragraph referred
30 to as the “predecessor”) or the major portion of a separate unit of
31 a trade or business of a predecessor, then, for purposes of applying
32 this section (other than subdivision (e)) for any calendar year
33 ending after that acquisition, the employment relationship between
34 a qualified employee and an employer shall not be treated as
35 terminated if the employee continues to be employed in that trade
36 or business.

37 (e) (1) (A) If the employment, other than seasonal employment,
38 of any qualified employee, with respect to whom qualified wages
39 are taken into account under subdivision (a) is terminated by the
40 taxpayer at any time during the first 270 days of that employment

(whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(B) If the seasonal employment of any qualified employee, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified employee commences seasonal employment with the taxpayer, the tax imposed by this part, for the taxable year that includes the 60th month following the month in which the qualified employee commences seasonal employment with the taxpayer, shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that qualified employee.

(2) (A) Subparagraph (A) of paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a qualified employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a qualified employee who, before the close of the period referred to in paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that employee.

(iii) A termination of employment of a qualified employee, if it is determined that the termination was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that employee.

(iv) A termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a qualified employee, if that employee is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

1 (B) Subparagraph (B) of paragraph (1) shall not apply to any
2 of the following:

3 (i) A failure to continue the seasonal employment of a qualified
4 employee who voluntarily fails to return to the seasonal
5 employment of the taxpayer.

6 (ii) A failure to continue the seasonal employment of a qualified
7 employee who, before the close of the period referred to in
8 subparagraph (B) of paragraph (1), becomes disabled and unable
9 to perform the services of that seasonal employment, unless that
10 disability is removed before the close of that period and the
11 taxpayer fails to offer seasonal employment to that qualified
12 employee.

13 (iii) A failure to continue the seasonal employment of a qualified
14 employee, if it is determined that the failure to continue the
15 seasonal employment was due to the misconduct (as defined in
16 Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California
17 Code of Regulations) of that qualified employee.

18 (iv) A failure to continue seasonal employment of a qualified
19 employee due to a substantial reduction in the regular seasonal
20 trade or business operations of the taxpayer.

21 (v) A failure to continue the seasonal employment of a qualified
22 employee, if that qualified employee is replaced by other qualified
23 employees so as to create a net increase in both the number of
24 seasonal employees and the hours of seasonal employment.

25 (C) For purposes of paragraph (1), the employment relationship
26 between the taxpayer and a qualified employee shall not be treated
27 as terminated by reason of a mere change in the form of conducting
28 the trade or business of the taxpayer, if the qualified employee
29 continues to be employed in that trade or business and the taxpayer
30 retains a substantial interest in that trade or business.

31 (3) Any increase in tax under paragraph (1) shall not be treated
32 as tax imposed by this part for purposes of determining the amount
33 of any credit allowable under this part.

34 (f) In the case of an estate or trust, both of the following apply:

35 (1) The qualified wages for any taxable year shall be apportioned
36 between the estate or trust and the beneficiaries on the basis of the
37 income of the estate or trust allocable to each.

38 (2) Any beneficiary to whom any qualified wages have been
39 apportioned under paragraph (1) shall be treated, for purposes of
40 this part, as the employer with respect to those wages.

1 (g) For purposes of this section, “enterprise zone” means an
2 area designated as an enterprise zone pursuant to Chapter 12.8
3 (commencing with Section 7070) of Division 7 of Title 1 of the
4 Government Code.

5 (h) The credit allowable under this section shall be reduced by
6 the credit allowed under Sections 17053.10, 17053.17 and 17053.46
7 claimed for the same employee. The credit shall also be reduced
8 by the federal credit allowed under Section 51 of the Internal
9 Revenue Code.

10 In addition, any deduction otherwise allowed under this part for
11 the wages or salaries paid or incurred by the taxpayer upon which
12 the credit is based shall be reduced by the amount of the credit,
13 prior to any reduction required by subdivision (i) or (j).

14 (i) In the case where the credit otherwise allowed under this
15 section exceeds the “net tax” for the taxable year, that portion of
16 the credit that exceeds the “net tax” may be carried over and added
17 to the credit, if any, in succeeding taxable years, until the credit is
18 exhausted. The credit shall be applied first to the earliest taxable
19 years possible.

20 (j) (1) The amount of the credit otherwise allowed under this
21 section and Section 17053.70, including any credit carryover from
22 prior years, that may reduce the “net tax” for the taxable year shall
23 not exceed the amount of tax which would be imposed on the
24 taxpayer’s business income attributable to the enterprise zone
25 determined as if that attributable income represented all of the
26 income of the taxpayer subject to tax under this part.

27 (2) Attributable income shall be that portion of the taxpayer’s
28 California source business income that is apportioned to the
29 enterprise zone. For that purpose, the taxpayer’s business income
30 attributable to sources in this state first shall be determined in
31 accordance with Chapter 17 (commencing with Section 25101) of
32 Part 11. That business income shall be further apportioned to the
33 enterprise zone in accordance with Article 2 (commencing with
34 Section 25120) of Chapter 17 of Part 11, modified for purposes
35 of this section in accordance with paragraph (3).

36 (3) Business income shall be apportioned to the enterprise zone
37 by multiplying the total California business income of the taxpayer
38 by a fraction, the numerator of which is the property factor plus
39 the payroll factor, and the denominator of which is two. For
40 purposes of this paragraph:

1 (A) The property factor is a fraction, the numerator of which is
2 the average value of the taxpayer's real and tangible personal
3 property owned or rented and used in the enterprise zone during
4 the taxable year, and the denominator of which is the average value
5 of all the taxpayer's real and tangible personal property owned or
6 rented and used in this state during the taxable year.

7 (B) The payroll factor is a fraction, the numerator of which is
8 the total amount paid by the taxpayer in the enterprise zone during
9 the taxable year for compensation, and the denominator of which
10 is the total compensation paid by the taxpayer in this state during
11 the taxable year.

12 (4) The portion of any credit remaining, if any, after application
13 of this subdivision, shall be carried over to succeeding taxable
14 years, as if it were an amount exceeding the "net tax" for the
15 taxable year, as provided in subdivision (i).

16 (k) The changes made to this section by the act adding this
17 subdivision shall apply to taxable years beginning on or after
18 January 1, 1997.

19 (l) The changes made to this section by the act adding this
20 subdivision shall apply to ~~taxable years beginning~~ *any qualified*
21 *employee who commences employment* on or after January 1, 2011.

22 ~~SEC. 4.~~

23 *SEC. 3.* Section 17057.6 is added to the Revenue and Taxation
24 Code, to read:

25 17057.6. (a) For taxable years beginning on or after January
26 1, 2011, there shall be allowed to a qualified taxpayer as a credit
27 against the "net tax," as defined in Section 17039, an amount equal
28 to that allocated to a qualified taxpayer by the State Department
29 of Education pursuant to Section 64202 of the ~~Education Code, to~~
30 ~~be applied for each of five taxable years as provided in the~~
31 ~~certification provided to the qualified taxpayer pursuant to Section~~
32 ~~64202 of the Education Code.~~ *Education Code.*

33 (b) For purposes of this section a "qualified taxpayer" means a
34 ~~taxpayer an applicant~~, as defined in Section 64201 of the Education
35 Code, who is either the sole owner if an individual, partners if the
36 taxpayer is a partnership, or shareholders if the taxpayer is an "S"
37 corporation.

38 ~~(c) No credit shall be allowed pursuant to this section unless~~
39 ~~the qualified taxpayer attaches a copy of certification provided to~~

1 ~~the qualified taxpayer pursuant to Section 64202 of the Education~~
2 ~~Code.~~

3 *(c) Upon the request of the Franchise Tax Board, the qualified*
4 *taxpayer shall provide a copy of the certification provided pursuant*
5 *to Section 64202 of the Education Code to the Franchise Tax*
6 *Board.*

7 (d) The aggregate amount of credits that may be allocated in
8 any ~~fiscal~~ calendar year pursuant to this section and Section
9 23610.6 shall be an amount equal to the sum of the following:

10 ~~(1) Sixteen million dollars (\$16,000,000) for the 2010–11 fiscal~~
11 ~~year.~~

12 ~~(2) (A) Sixty-five million dollars (\$65,000,000) for the 2011–12~~
13 ~~fiscal year.~~

14 ~~(B) The unused credit allocation amount, if any, for the~~
15 ~~preceding fiscal year.~~

16 ~~(3) (A) Ninety-five million dollars (\$95,000,000) for the~~
17 ~~2012–13 fiscal year, hereafter the baseline amount, and each fiscal~~

18 *(1) Seventy-eight million dollars (\$78,000,000) for the 2011*
19 *calendar year.*

20 *(2) (A) One hundred million dollars (\$100,000,000) for the*
21 *2012 calendar year, hereafter the baseline amount, and each*
22 *calendar year thereafter. For each subsequent fiscal calendar year,*
23 *the baseline amount shall be adjusted by the Franchise Tax Board*
24 *to reflect the rate of inflation or deflation from the previous date*
25 *that the baseline amount was established, as measured by the*
26 *Consumer Price Index or other method of measuring the rate of*
27 *inflation or deflation which the Franchise Tax Board determines*
28 *is reliable and generally accepted.*

29 (B) The unused credit allocation amount, if any, for the
30 preceding ~~fiscal~~ calendar year, or years.

31 (e) In the case where the credit allowed under this section
32 exceeds the “net tax,” the excess credit may be carried over to
33 reduce the “net tax” in the following taxable year, and succeeding
34 taxable years, if necessary, until the credit has been exhausted.

35 (f) If a qualified taxpayer fails to comply with the requirements
36 of this section or with Part 38 (commencing with Section 64200)
37 of Division 4 of Title 2 of the Education Code, the credit shall be
38 disallowed and assessed and collected under Section 19051 until
39 the requirements are satisfied.

1 ~~SEC. 5.~~

2 ~~SEC. 4.~~ Section 23610.6 is added to the Revenue and Taxation
3 Code, to read:

4 23610.6. (a) For taxable years beginning on or after January
5 1, 2011, there shall be allowed to a qualified taxpayer as a credit
6 against the “tax,” as defined in Section 23036, an amount equal
7 to that allocated to a qualified taxpayer by the State Department
8 of Education pursuant to Section 64202 of the ~~Education Code~~, to
9 ~~be applied for each of five taxable years as provided in the~~
10 ~~certification provided to the qualified taxpayer pursuant to Section~~
11 ~~64202 of the Education Code.~~ *Education Code.*

12 (b) For purposes of this section a “qualified taxpayer” means a
13 ~~taxpayer an applicant~~, as defined in Section 64201 of the Education
14 Code, that is subject to the taxes imposed by this part.

15 ~~(c) No credit shall be allowed pursuant to this section unless~~
16 ~~the qualified taxpayer attaches a copy of certification provided to~~
17 ~~the qualified taxpayer pursuant to Section 64202 of the Education~~
18 ~~Code.~~

19 ~~(c) Upon the request of the Franchise Tax Board, the qualified~~
20 ~~taxpayer shall provide a copy of the certification provided pursuant~~
21 ~~to Section 64202 of the Education Code to the Franchise Tax~~
22 ~~Board.~~

23 (d) The aggregate amount of credits that may be allocated in
24 any ~~fiscal~~ calendar year pursuant to this section and Section
25 17057.6 shall be an amount equal to the sum of the following:

26 ~~(1) Sixteen million dollars (\$16,000,000) for the 2010–11 fiscal~~
27 ~~year.~~

28 ~~(2) (A) Sixty-five million dollars (\$65,000,000) for the 2011–12~~
29 ~~fiscal year.~~

30 ~~(B) The unused credit allocation amount, if any, for the~~
31 ~~preceding fiscal year.~~

32 ~~(3) (A) Ninety-five million dollars (\$95,000,000) for the~~
33 ~~2012–13 fiscal year, hereafter the baseline amount, and each fiscal~~

34 ~~(1) Seventy-eight million dollars (\$78,000,000) for the 2011~~
35 ~~calendar year.~~

36 ~~(2) (A) One hundred million dollars (\$100,000,000) for the~~
37 ~~2012 calendar year, hereafter the baseline amount, and each~~
38 ~~calendar year thereafter. For each subsequent fiscal calendar year,~~
39 ~~the baseline amount shall be adjusted by the Franchise Tax Board~~
40 ~~to reflect the rate of inflation or deflation from the previous date~~

1 that the baseline amount was established, as measured by the
2 Consumer Price Index or other method of measuring the rate of
3 inflation or deflation which the Franchise Tax Board determines
4 is reliable and generally accepted.

5 (B) The unused credit allocation amount, if any, for the
6 preceding fiscal year, or years.

7 (e) In the case where the credit allowed under this section
8 exceeds the “tax,” the excess credit may be carried over to reduce
9 the “tax” in the following taxable year, and succeeding taxable
10 years, if necessary, until the credit has been exhausted.

11 (f) If a qualified taxpayer fails to comply with the requirements
12 of this section or with Part 38 (commencing with Section 64200)
13 of Division 4 of Title 2 of the Education Code, the credit shall be
14 disallowed and assessed and collected under Section 19051 until
15 the requirements are satisfied.

16 *SEC. 5. Section 23622.7 of the Revenue and Taxation Code is*
17 *amended to read:*

18 23622.7. (a) There shall be allowed a credit against the “tax”
19 (as defined by Section 23036) to a taxpayer who employs a
20 qualified employee in an enterprise zone during the taxable year.
21 The credit shall be equal to the sum of each of the following:

22 (1) Fifty percent of qualified wages in the first year of
23 employment.

24 (2) Forty percent of qualified wages in the second year of
25 employment.

26 (3) Thirty percent of qualified wages in the third year of
27 employment.

28 (4) Twenty percent of qualified wages in the fourth year of
29 employment.

30 (5) Ten percent of qualified wages in the fifth year of
31 employment.

32 (b) For purposes of this section:

33 (1) “Qualified wages” means:

34 (A) (i) Except as provided in clause (ii), that portion of wages
35 paid or incurred by the taxpayer during the taxable year to qualified
36 employees that does not exceed 150 percent of the minimum wage.

37 (ii) For up to 1,350 qualified employees who are employed by
38 the taxpayer in the Long Beach Enterprise Zone in aircraft
39 manufacturing activities described in Codes 3721 to 3728,
40 inclusive, and Code 3812 of the Standard Industrial Classification

(SIC) Manual published by the United States Office of Management and Budget, 1987 edition, “qualified wages” means that portion of hourly wages that does not exceed 202 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the first day the employee commences employment with the taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business operations of the taxpayer does not constitute commencement of employment for purposes of this section.

(C) Qualified wages do not include any wages paid or incurred by the taxpayer on or after the zone expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the taxpayer within the enterprise zone within the 60-month period prior to the zone expiration date shall continue to qualify for the credit under this section after the zone expiration date, in accordance with all provisions of this section applied as if the enterprise zone designation were still in existence and binding.

(2) “Minimum wage” means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) “Zone expiration date” means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(4) (A) “Qualified employee” means an individual who meets all of the following requirements:

(i) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer’s trade or business located in an enterprise zone.

(ii) Performs at least 50 percent of his or her services for the taxpayer during the taxable year in an enterprise zone.

(iii) Is hired by the taxpayer after the date of original designation of the area in which services were performed as an enterprise zone.

(iv) Is any of the following:

(I) Immediately preceding the qualified employee’s commencement of employment with the taxpayer, was a person eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, or is eligible to receive, subsidized employment, training, or

1 services funded by the federal Job Training Partnership Act, or its
2 successor.

3 (II) Immediately preceding the qualified employee's
4 commencement of employment with the taxpayer, was a person
5 eligible to be a voluntary or mandatory registrant under the Greater
6 Avenues for Independence Act of 1985 (GAIN) provided for
7 pursuant to Article 3.2 (commencing with Section 11320) of
8 Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions
9 Code, or its successor.

10 (III) Immediately preceding the qualified employee's
11 commencement of employment with the taxpayer, was an
12 economically disadvantaged individual 14 years of age or older.

13 (IV) Immediately preceding the qualified employee's
14 commencement of employment with the taxpayer, was a dislocated
15 worker who meets any of the following:

16 ~~(aa)~~

17 *(ia)* Has been terminated or laid off or who has received a notice
18 of termination or layoff from employment, is eligible for or has
19 exhausted entitlement to unemployment insurance benefits, and
20 is unlikely to return to his or her previous industry or occupation.

21 ~~(bb)~~

22 *(ib)* Has been terminated or has received a notice of termination
23 of employment as a result of any permanent closure or any
24 substantial layoff at a plant, facility, or enterprise, including an
25 individual who has not received written notification but whose
26 employer has made a public announcement of the closure or layoff.

27 ~~(ee)~~

28 *(ic)* Is long-term unemployed and has limited opportunities for
29 employment or reemployment in the same or a similar occupation
30 in the area in which the individual resides, including an individual
31 55 years of age or older who may have substantial barriers to
32 employment by reason of age.

33 ~~(dd)~~

34 *(id)* Was self-employed (including farmers and ranchers) and
35 is unemployed as a result of general economic conditions in the
36 community in which he or she resides or because of natural
37 disasters.

38 ~~(ee)~~

1 (ie) Was a civilian employee of the Department of Defense
2 employed at a military installation being closed or realigned under
3 the Defense Base Closure and Realignment Act of 1990.

4 ~~(ff)~~

5 (if) Was an active member of the armed forces or National Guard
6 as of September 30, 1990, and was either involuntarily separated
7 or separated pursuant to a special benefits program.

8 ~~(gg)~~

9 (ig) Is a seasonal or migrant worker who experiences chronic
10 seasonal unemployment and underemployment in the agriculture
11 industry, aggravated by continual advancements in technology and
12 mechanization.

13 ~~(hh)~~

14 (ih) Has been terminated or laid off, or has received a notice of
15 termination or layoff, as a consequence of compliance with the
16 Clean Air Act.

17 (V) Immediately preceding the qualified employee's
18 commencement of employment with the taxpayer, was a disabled
19 individual who is eligible for or enrolled in, or has completed a
20 state rehabilitation plan or is a service-connected disabled veteran,
21 veteran of the Vietnam era, or veteran who is recently separated
22 from military service.

23 (VI) Immediately preceding the qualified employee's
24 commencement of employment with the taxpayer, was an
25 ex-offender. ~~An individual shall be treated as convicted if he or~~
26 ~~she was placed on probation by a state court without a finding of~~
27 ~~guilt. An ex-offender means an individual who has been convicted~~
28 ~~of a felony or a misdemeanor offense punishable by incarceration~~
29 ~~or a person charged with a felony offense or a misdemeanor offense~~
30 ~~punishable by incarceration but placed on probation by a state~~
31 ~~court without a finding of guilt. Ex-offender shall not include an~~
32 ~~individual whose record has been expunged.~~

33 (VII) Immediately preceding the qualified employee's
34 commencement of employment with the taxpayer, was a person
35 eligible for or a recipient of any of the following:

36 ~~(aa)~~

37 (ia) Federal Supplemental Security Income benefits.

38 ~~(bb) Aid to Families with Dependent Children.~~

39 (ib) Temporary Assistance for Needy Families.

40 ~~(cc)~~

1 (ic) Food stamps.

2 ~~(dd)~~

3 (id) State and local general assistance.

4 (VIII) Immediately preceding the qualified employee's
5 commencement of employment with the taxpayer, was a member
6 of a federally recognized Indian tribe, band, or other group of
7 Native American descent.

8 ~~(IX) Immediately preceding the qualified employee's~~
9 ~~commencement of employment with the taxpayer, was a resident~~
10 ~~of a targeted employment area (as defined in Section 7072 of the~~
11 ~~Government Code).~~

12 ~~(X)~~

13 (IX) An employee who qualified the taxpayer for the enterprise
14 zone hiring credit under former Section 23622 or the program area
15 hiring credit under former Section 23623.

16 ~~(XI)~~

17 (X) Immediately preceding the qualified employee's
18 commencement of employment with the taxpayer, was a member
19 of a targeted group, as defined in Section 51(d) of the Internal
20 Revenue Code, or its successor.

21 (B) Priority for employment shall be provided to an individual
22 who is enrolled in a qualified program under the federal ~~Job~~
23 ~~Training Partnership Workforce Investment Act~~ or the ~~Greater~~
24 ~~Avenues for Independence Act of 1985~~ *California Work*
25 *Opportunity and Responsibility to Kids Act (CalWORKs)* or who
26 is eligible as a member of a targeted group under the Work
27 Opportunity Tax Credit (Section 51 of the Internal Revenue Code),
28 or its successor.

29 (5) "Taxpayer" means a corporation engaged in a trade or
30 business within an enterprise zone designated pursuant to Chapter
31 12.8 (commencing with Section 7070) of Division 7 of Title 1 of
32 the Government Code.

33 (6) "Seasonal employment" means employment by a taxpayer
34 that has regular and predictable substantial reductions in trade or
35 business operations.

36 (c) The taxpayer shall do both of the following:

37 ~~(1) Obtain~~ (A) *Obtain, within 42 days from the commencement*
38 *date of employment,* from the Employment Development
39 Department, as permitted by federal law, the local county or city
40 ~~Job Training Partnership Workforce Investment Act~~ administrative

1 entity, the local county ~~GAIN~~ CalWORKs office or social services
2 agency, or the local government administering the enterprise zone,
3 a certification that provides that a qualified employee meets the
4 eligibility requirements specified in clause (iv) of subparagraph
5 (A) of paragraph (4) of subdivision (b). The Employment
6 Development Department may provide preliminary screening and
7 referral to a certifying agency. The Employment Development
8 Department shall develop a form for this purpose. The Department
9 of Housing and Community Development shall develop regulations
10 governing the issuance of certificates by local governments
11 pursuant to subdivision (a) of Section 7086 of the Government
12 Code.

13 *(B) Applications for certification shall be submitted to the*
14 *certifying agency within 28 days of the commencement date of*
15 *employment for the employee. The certifying agency shall not*
16 *provide a certification for any employee whose employment*
17 *commenced more than 28 days before the taxpayer requests a*
18 *certification.*

19 (2) Retain a copy of the certification and provide it upon request
20 to the Franchise Tax Board.

21 (d) (1) For purposes of this section:

22 (A) All employees of all corporations which are members of
23 the same controlled group of corporations shall be treated as
24 employed by a single taxpayer.

25 (B) The credit, if any, allowable by this section to each member
26 shall be determined by reference to its proportionate share of the
27 expense of the qualified wages giving rise to the credit, and shall
28 be allocated in that manner.

29 (C) For purposes of this subdivision, “controlled group of
30 corporations” means “controlled group of corporations” as defined
31 in Section 1563(a) of the Internal Revenue Code, except that:

32 (i) “More than 50 percent” shall be substituted for “at least 80
33 percent” each place it appears in Section 1563(a)(1) of the Internal
34 Revenue Code.

35 (ii) The determination shall be made without regard to
36 subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal
37 Revenue Code.

38 (2) If an employer acquires the major portion of a trade or
39 business of another employer—~~hereinafter~~ *hereafter* in this
40 paragraph referred to as the “predecessor”) or the major portion

1 of a separate unit of a trade or business of a predecessor, then, for
2 purposes of applying this section (other than subdivision (e)) for
3 any calendar year ending after that acquisition, the employment
4 relationship between a qualified employee and an employer shall
5 not be treated as terminated if the employee continues to be
6 employed in that trade or business.

7 (e) (1) (A) If the employment, other than seasonal employment,
8 of any qualified employee with respect to whom qualified wages
9 are taken into account under subdivision (a) is terminated by the
10 taxpayer at any time during the first 270 days of that employment,
11 whether or not consecutive, or before the close of the 270th
12 calendar day after the day in which that employee completes 90
13 days of employment with the taxpayer, the tax imposed by this
14 part for the taxable year in which that employment is terminated
15 shall be increased by an amount equal to the credit allowed under
16 subdivision (a) for that taxable year and all prior taxable years
17 attributable to qualified wages paid or incurred with respect to that
18 employee.

19 (B) If the seasonal employment of any qualified employee, with
20 respect to whom qualified wages are taken into account under
21 subdivision (a) is not continued by the taxpayer for a period of
22 270 days of employment during the 60-month period beginning
23 with the day the qualified employee commences seasonal
24 employment with the taxpayer, the tax imposed by this part, for
25 the taxable year that includes the 60th month following the month
26 in which the qualified employee commences seasonal employment
27 with the taxpayer, shall be increased by an amount equal to the
28 credit allowed under subdivision (a) for that taxable year and all
29 prior taxable years attributable to qualified wages paid or incurred
30 with respect to that qualified employee.

31 (2) (A) Subparagraph (A) of paragraph (1) shall not apply to
32 any of the following:

33 (i) A termination of employment of a qualified employee who
34 voluntarily leaves the employment of the taxpayer.

35 (ii) A termination of employment of a qualified employee who,
36 before the close of the period referred to in subparagraph (A) of
37 paragraph (1), becomes disabled and unable to perform the services
38 of that employment, unless that disability is removed before the
39 close of that period and the taxpayer fails to offer reemployment
40 to that employee.

1 (iii) A termination of employment of a qualified employee, if
2 it is determined that the termination was due to the misconduct (as
3 defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of
4 the California Code of Regulations) of that employee.

5 (iv) A termination of employment of a qualified employee due
6 to a substantial reduction in the trade or business operations of the
7 taxpayer.

8 (v) A termination of employment of a qualified employee, if
9 that employee is replaced by other qualified employees so as to
10 create a net increase in both the number of employees and the
11 hours of employment.

12 (B) Subparagraph (B) of paragraph (1) shall not apply to any
13 of the following:

14 (i) A failure to continue the seasonal employment of a qualified
15 employee who voluntarily fails to return to the seasonal
16 employment of the taxpayer.

17 (ii) A failure to continue the seasonal employment of a qualified
18 employee who, before the close of the period referred to in
19 subparagraph (B) of paragraph (1), becomes disabled and unable
20 to perform the services of that seasonal employment, unless that
21 disability is removed before the close of that period and the
22 taxpayer fails to offer seasonal employment to that qualified
23 employee.

24 (iii) A failure to continue the seasonal employment of a qualified
25 employee, if it is determined that the failure to continue the
26 seasonal employment was due to the misconduct (as defined in
27 Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California
28 Code of Regulations) of that qualified employee.

29 (iv) A failure to continue seasonal employment of a qualified
30 employee due to a substantial reduction in the regular seasonal
31 trade or business operations of the taxpayer.

32 (v) A failure to continue the seasonal employment of a qualified
33 employee, if that qualified employee is replaced by other qualified
34 employees so as to create a net increase in both the number of
35 seasonal employees and the hours of seasonal employment.

36 (C) For purposes of paragraph (1), the employment relationship
37 between the taxpayer and a qualified employee shall not be treated
38 as terminated by either of the following:

1 (i) By a transaction to which Section 381(a) of the Internal
2 Revenue Code applies, if the qualified employee continues to be
3 employed by the acquiring corporation.

4 (ii) By reason of a mere change in the form of conducting the
5 trade or business of the taxpayer, if the qualified employee
6 continues to be employed in that trade or business and the taxpayer
7 retains a substantial interest in that trade or business.

8 (3) Any increase in tax under paragraph (1) shall not be treated
9 as tax imposed by this part for purposes of determining the amount
10 of any credit allowable under this part.

11 (f) Rules similar to the rules provided in Section 46(e) and (h)
12 of the Internal Revenue Code shall apply to both of the following:

13 (1) An organization to which Section 593 of the Internal
14 Revenue Code applies.

15 (2) A regulated investment company or a real estate investment
16 trust subject to taxation under this part.

17 (g) For purposes of this section, “enterprise zone” means an
18 area designated as an enterprise zone pursuant to Chapter 12.8
19 (commencing with Section 7070) of Division 7 of Title 1 of the
20 Government Code.

21 (h) The credit allowable under this section shall be reduced by
22 the credit allowed under Sections 23623.5, 23625, and 23646
23 claimed for the same employee. The credit shall also be reduced
24 by the federal credit allowed under Section 51 of the Internal
25 Revenue Code.

26 In addition, any deduction otherwise allowed under this part for
27 the wages or salaries paid or incurred by the taxpayer upon which
28 the credit is based shall be reduced by the amount of the credit,
29 prior to any reduction required by subdivision (i) or (j).

30 (i) In the case where the credit otherwise allowed under this
31 section exceeds the “tax” for the taxable year, that portion of the
32 credit that exceeds the “tax” may be carried over and added to the
33 credit, if any, in succeeding taxable years, until the credit is
34 exhausted. The credit shall be applied first to the earliest taxable
35 years possible.

36 (j) (1) The amount of the credit otherwise allowed under this
37 section and Section 23612.2, including any credit carryover from
38 prior years, that may reduce the “tax” for the taxable year shall
39 not exceed the amount of tax which would be imposed on the
40 taxpayer’s business income attributable to the enterprise zone

1 determined as if that attributable income represented all of the
2 income of the taxpayer subject to tax under this part.

3 (2) Attributable income shall be that portion of the taxpayer's
4 California source business income that is apportioned to the
5 enterprise zone. For that purpose, the taxpayer's business
6 attributable to sources in this state first shall be determined in
7 accordance with Chapter 17 (commencing with Section 25101).
8 That business income shall be further apportioned to the enterprise
9 zone in accordance with Article 2 (commencing with Section
10 25120) of Chapter 17, modified for purposes of this section in
11 accordance with paragraph (3).

12 (3) Business income shall be apportioned to the enterprise zone
13 by multiplying the total California business income of the taxpayer
14 by a fraction, the numerator of which is the property factor plus
15 the payroll factor, and the denominator of which is two. For
16 purposes of this paragraph:

17 (A) The property factor is a fraction, the numerator of which is
18 the average value of the taxpayer's real and tangible personal
19 property owned or rented and used in the enterprise zone during
20 the income year, and the denominator of which is the average value
21 of all the taxpayer's real and tangible personal property owned or
22 rented and used in this state during the income year.

23 (B) The payroll factor is a fraction, the numerator of which is
24 the total amount paid by the taxpayer in the enterprise zone during
25 the income year for compensation, and the denominator of which
26 is the total compensation paid by the taxpayer in this state during
27 the income year.

28 (4) The portion of any credit remaining, if any, after application
29 of this subdivision, shall be carried over to succeeding taxable
30 years, as if it were an amount exceeding the "tax" for the taxable
31 year, as provided in subdivision (i).

32 (k) The changes made to this section by the act adding this
33 subdivision shall apply to taxable years on or after January 1, 1997.

34 (l) *The changes made to this section by the act adding this*
35 *subdivision shall apply to any qualified employee who commences*
36 *employment on or after January 1, 2011.*

37 SEC. 6. *This act provides for a tax levy within the meaning of*
38 *Article IV of the Constitution and shall go into immediate effect.*

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**All matter omitted in this version of the bill
appears in the bill as amended in the
Senate, May 3, 2010. (JR11)**

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